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BERENICE BRACKETT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BERENICE BRACKETT,

Plaintiff,

VS.

HILTON HOTELS CORPORATION, a Delaware Corporation, HILTON SUPPLY MANAGEMENT, INC., a Delaware Corporation, KEVIN A. BARRY, an individual, KEVIN BARRY FINE ART ASSOCIATES, a California Corporation, JOHN or JANE DOES 1-100, individuals of presently unknown identity, and ABC CORPORATIONS 1-300, corporations of presently unknown identity,

Defendants.

Case No.

# COMPLAINT FOR COPYRIGHT INFRINGEMENT, REMOVAL OF COPYRIGHT MANAGEMENT INFORMATION, AND TORTIOUS INTERFERENCE

## DEMAND FOR JURY TRIAL

This is a copyright infringement case. Several years ago two of the defendants requested but were denied permission to mass-produce the plaintiff's copyrighted paintings. Despite having been refused permission, the defendants made the copies anyway. They stripped plaintiff's name from limited-edition prints they had purchased, made tiny changes to them (such as transposing an apple and a calla lily

1 in the background of a still life), then mass-produced copies for distribution to Hilton  
2 hotels across America. Hilton's web pages show hundreds, if not thousands, of  
3 illegal copies of plaintiff's copyrighted artwork hanging in the hotel rooms of Hilton  
4 hotels nationwide.

5 Accordingly, for her complaint against the defendants, plaintiff Berenice  
6 Brackett now alleges as follows.

### 8 JURISDICTION

9 1. The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331,  
10 1338(a) & 1338(b). At least one claim arises under the copyright laws of the United  
11 States, 17 U.S.C. §§ 101 *et seq.*, and under 28 U.S.C. § 2201.

12 2. The Court has supplemental jurisdiction under 28 U.S.C. § 1367. The  
13 state and federal claims both involve the same case or controversy.

### 15 VENUE

16 3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because the  
17 copyrighted materials that were infringed were appropriated for copying from this  
18 district, the contracts and business relations the defendants interfered with were and  
19 will be entered and performed in this district, and the copyrights infringed in this  
20 case are owned by and registered to a resident of this district.

### 22 INTRADISTRICT ASSIGNMENT

23 4. This is an intellectual property action.

### 25 THE PARTIES

26 5. Plaintiff Berenice (Brennie) Brackett is an individual who lives in  
27 Sonoma County, California. Ms. Brackett was and is a citizen of the United States.

1           6. Defendant Hilton Hotels Corporation (Hilton) is an international  
2 hospitality company incorporated under the laws of Delaware, registered to do  
3 business in California, and having worldwide headquarters at 9336 Civic Center  
4 Drive, Beverly Hills, California.

5           7. Defendant Hilton Supply Management, Inc. (Hilton Supply) is a Hilton  
6 subsidiary. Hilton Supply is incorporated under the laws of Delaware, registered to  
7 do business in California and, like Hilton, headquartered at 9336 Civic Center Drive,  
8 Beverly Hills, California.

9           8. Defendant Kevin A. Barry is an individual residing in California.

10          9. Defendant Kevin Barry Fine Art Associates is a California corporation  
11 with a business address of 8210 Melrose Avenue, Los Angeles, California.

12          10. Defendants John or Jane Does 1-100 are individuals whose names and  
13 identities Ms. Brackett does not presently know, but who, on information and belief,  
14 committed or facilitated the copyright infringement and other acts or omissions  
15 alleged below. For example, as-yet unknown individual defendants—including  
16 individual employees, officers, contract artists, or agents of Hilton, Hilton Supply,  
17 Mr. Barry, or Kevin Barry Fine Art Associates—may have made the actual copies of  
18 Ms. Brackett's copyrighted works. Others may have been the ones who posted  
19 copyrighted images to the Hilton websites. Ms. Brackett will add the names and  
20 identities of these Doe defendants when she learns them.

21          11. Defendants ABC Corporations 1-300 are corporations whose names  
22 Ms. Brackett does not presently know, but which, on information and belief,  
23 committed or facilitated the copyright infringement and other acts or omissions  
24 alleged below. For example, as-yet unknown corporations—including Hilton  
25 subsidiaries, Hilton affiliates, or Hilton franchisees—may have duplicated,  
26 distributed, publicly displayed, or created derivative works of Ms. Brackett's  
27

1 copyrighted works. Ms. Brackett will add the names and identities of these ABC  
2 Corporation defendants when she learns them.

3  
4 THE FACTS

5 12. Brennie Brackett is a professional artist who lives and works in Sonoma  
6 County, California. Among many other works of original art, Ms. Brackett authored  
7 in 2002 and 2003 three original pastel paintings entitled *Falling Into Place*, *Winter's*  
8 *Velvet*, and *Great Expectations*. A color reproduction of each work appears in  
9 Exhibit A.

10 13. Ms. Brackett is and has always been the sole owner of all right, title,  
11 and interest in the copyrights in the three artworks. All three have been registered  
12 with the U.S. Copyright Office, with registration numbers VA 1-627-549 (*Great*  
13 *Expectations*), VA 1-627-551 (*Winter's Velvet*), and VA 1-627-553 (*Falling Into Place*).  
14 Ms. Brackett has complied in all respects with the copyright laws of the United States  
15 applicable to these works, including deposit requirements.

16 14. In addition to selling original pastel paintings, Ms. Brackett authorizes  
17 the sale of limited-edition "giclées" of her work. A giclée is a high-quality, digital  
18 print of fine art. The giclée prints are sold in runs of no more than 150 copies, each  
19 hand-signed by Ms. Brackett and with a notation of its order within the limited print  
20 run. For example, the fifteenth giclée sold in a limited-edition run of 150 would bear  
21 the notation, "15/150," followed by Ms. Brackett's signature.

22 15. Two or more years ago, defendant Kevin A. Barry, an art dealer, acting  
23 through his company, Kevin Barry Fine Art Associates, purchased three of  
24 Ms. Brackett's giclées. He bought one giclée each of *Falling Into Place*, *Winter's Velvet*,  
25 and *Great Expectations*.

26 16. Around the time Mr. Barry and his company bought the three giclées,  
27 he inquired whether Ms. Brackett would be willing to sell his company large

1 quantities of her artwork. Mr. Barry was told Ms. Brackett was not interested, and he  
2 was denied permission to make any purchases, sales, or displays of her art.

3 17. Mr. Barry decided to copy and sell the images anyway. Acting, on  
4 information and belief, with the knowledge and approval of Hilton and the other  
5 defendants, he (or they and he) made (or had made) large numbers of reproductions  
6 of Ms. Brackett's works. Mr. Barry then sold the copies to Hilton or related  
7 companies. Ms. Brackett is aware of at least 934 such copies having been made and  
8 sold to Hilton Supply; but more copies may have been made or sold. The copies  
9 were then resold to others, including, in particular, franchisees of the "Homewood  
10 Suites" Hilton hotel brand.

11 18. Homewood Suites is a large and rapidly-growing division within  
12 Hilton, catering to extended-stay travelers. Ms. Brackett's artwork began to appear  
13 on the walls of Homewood Suites hotel rooms across the United States. In some  
14 cases a Homewood Suites hotel would have a hundred or more identical rooms, each  
15 one featuring one to two duplicates of Ms. Brackett's copyrighted works. The works  
16 also appeared on Homewood Suites websites.

17 19. Ms. Brackett learned of this copyright infringement only recently, when  
18 she saw her artwork on the web pages of Hilton's Homewood Suites division.  
19 *Falling Into Place*, *Winter's Velvet*, and *Great Expectations* each appeared on Homewood  
20 Suites web pages advertising model rooms for purchase by franchisees. And at least  
21 two of the paintings appeared on the web pages of individual Homewood Suites  
22 hotels. The hotels offer a "virtual tour" feature that allows prospective guests to see  
23 photographs of actual hotel rooms at that particular Homewood Suites hotel. The  
24 paintings were visible on the web pages that showed images of the hotel rooms.  
25 Given the number of individual Homewood Suites hotels whose photographs depict  
26 Ms. Brackett's artwork hanging in actual hotel rooms, and the large number of  
27 identical rooms at individual Homewood Suites hotels, it appears that hundreds or

1 even thousands of unauthorized copies of Ms. Brackett's works are hanging in  
2 Homewood Suites hotel rooms across the United States. Attached as Exhibit B to this  
3 complaint are copies of Ms. Brackett's work as they have been found on actual  
4 Homewood Suites web pages, whether those depicting model hotel rooms or those  
5 offering virtual tours of rooms.

6       20. The defendants made two notable changes to Ms. Brackett's works,  
7 each suggesting knowledge of the culpability of their acts. First, they removed  
8 Ms. Brackett's name and the limited-edition print number from all of the prints.  
9 Second, they made subtle alterations to one or more of the paintings. For example, in  
10 the reproduction of *Great Expectations*, the same subject matter is featured in the same  
11 colors, lighting, texture, and tone. But in the background, an apple and a calla lily  
12 have been transposed. (*Compare Great Expectations* in attached Exhibit A with  
13 Unauthorized Hilton Reproduction of *Great Expectations* in attached Exhibit B.)

14       21. On information and belief, in committing the acts or omissions alleged  
15 in this complaint, each defendant conspired with and aided and abetted each other,  
16 and each acted as the agent of each other. Further, on information and belief each  
17 individual defendant acted as the employee of each other defendant on whose behalf  
18 or at whose direction he or she committed the acts or omissions alleged here; and did  
19 so within the scope and course of his or her employment, and with the knowledge  
20 and permission of his or her employer(s), whether tacit or express; and acted under  
21 the authority, whether ostensible or actual, of his or her employer(s) or principal(s),  
22 such that the employees' acts or omissions are attributable to their employers, who  
23 are liable for them.

FIRST CAUSE OF ACTION  
Copyright Infringement  
(Against All Defendants)

22. Ms. Brackett incorporates paragraphs 5 through 21 of this complaint as though fully set forth here.

23. By, among other things, duplicating, distributing, publicly displaying, and/or creating derivative works of *Falling Into Place*, *Winter's Velvet*, and *Great Expectations*, the defendants, and each of them, have infringed Ms. Brackett's copyrights in violation of the copyright laws of the United States, 17 U.S.C. § 101, *et seq.*

24. The defendants have also contributorily and vicariously infringed Ms. Brackett's copyrights in *Falling Into Place*, *Winter's Velvet*, and *Great Expectations*.

25. The defendants' acts of direct, vicarious, and contributory infringement were intentional, willful, and malicious, and performed with knowledge that the works they or others were copying, selling, or publicly displaying belonged to Ms. Brackett. They were also done in reckless disregard of Ms. Brackett's rights.

26. The natural, probable, proximate, and foreseeable result of defendants' wrongful conduct was to damage Ms. Brackett, and to garner profits for themselves.

27. Ms. Brackett is entitled to disgorge these profits, and recover her actual damages, all in an amount to be determined at trial. Ms. Brackett is also entitled to a permanent injunction to prohibit continuing or future infringement of her rights.

SECOND CAUSE OF ACTION  
Removal Or Alteration Of Copyright Management Information  
(Against All Defendants)

28. Ms. Brackett incorporates paragraphs 5 through 27 of this complaint as though fully set forth here.

29. Without Ms. Brackett's permission or authority, and in violation of the law, the defendants intentionally removed or altered copyright management

1 information contained on *Falling Into Place*, *Winter's Velvet*, and/or *Great Expectations*.  
2 17 U.S.C. § 1202(b)(1).

3 30. As a natural, probable, proximate, and foreseeable result of defendants'  
4 wrongful conduct, Ms. Brackett suffered damages. She is entitled either to (1) her  
5 actual damages and disgorgement of the defendants' profits, or (2) to statutory  
6 damages, at her election. She is also entitled to attorneys' fees. 17 U.S.C. § 1203 (c).

7  
8 THIRD CAUSE OF ACTION  
9 Intentional Interference With  
10 Prospective Economic Relations  
(Against All Defendants)

11 31. Ms. Brackett incorporates paragraphs 5 through 30 of this complaint as  
12 though fully set forth here.

13 32. As noted above, Ms. Brackett authorized the sale of certain of her  
14 paintings as limited edition giclée prints. A defining feature of limited edition prints  
15 is that their number is limited. Ms. Brackett's giclées are sold in runs of no more than  
16 150 prints. Customers who buy the prints understand that they are buying a print of  
17 which there exist only 150 or fewer copies. For some customers, this is a factor in  
18 buying the print at the price asked. Ms. Brackett's economic relationship with her  
19 current and future customers thus depends on being able to assure them that her  
20 limited edition prints are in fact limited in number.

21 33. The defendants know this. Kevin Barry is a sophisticated art buyer  
22 who runs a Beverly Hills art dealership that sells art in large quantities to, among  
23 other customers, an international hotel chain. He understood, when he bought three  
24 limited edition giclées on which were handwritten the words, "21/150 Brennie  
25 Brackett," (or whatever print numbers they bore), that there would be no more than  
26 150 such giclées made. And, on information and belief, Hilton and its agents and  
27 personnel also knew it. The agents and personnel worked closely with Mr. Barry to





1           39. As noted above, Kevin Barry and the other defendants knew that the  
2 artwork they mass-produced and sold was sold by Ms. Brackett as limited-edition  
3 prints. The defendants thus knew that they were interfering with and frustrating the  
4 contractual relationship Ms. Brackett had with her existing customers. Nevertheless,  
5 the defendants intentionally mass-produced and distributed copies of these works.  
6 The inevitable result was an increase in both the burden and expense to Ms. Brackett  
7 as she sought to keep her commitments to her customers.

8           40. In addition, Mr. Barry and Hilton have each rebuffed Ms. Brackett's  
9 pre-litigation efforts to resolve this dispute, with Hilton refusing even to say whether  
10 in response to Ms. Brackett's demand letter it will agree to take down and destroy all  
11 copies of Ms. Brackett's work (save for representative samples for evidentiary  
12 purposes).

13           41. As a natural, probable, proximate, and foreseeable result of the  
14 defendants' conduct, Ms. Brackett has suffered damages in an amount to be  
15 determined at trial, including her burden and expense in having been forced to bring  
16 this lawsuit.

17           42. In addition, the defendants' wrongful, willful, and malicious conduct  
18 entitles Ms. Brackett to punitive damages.  
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PRAYER FOR RELIEF

Brennie Brackett prays:

1. That defendants be required to deliver up for impounding during the pendency of this action all copies in their possession, custody, or control of *Falling Into Place*, *Winter's Velvet*, and *Great Expectations*; and that such items be ordered destroyed following judgment in this case.

2. That defendants be required to deliver up for impounding during the pendency of this action all originals or copies in their possession, custody, or control of any computer files, scans, plates, press sheets, proofs, images, or other print materials used or that could be used in the production of copies of *Falling Into Place*, *Winter's Velvet*, or *Great Expectations*; and that such items be ordered destroyed following the judgment in this case.

3. For judgment against the defendants, and each of them, jointly and severally, as follows:

- a. for copyright damages, including Ms. Brackett's actual damages and the defendants' profits;
- b. for permanent injunctive relief prohibiting all defendants from further acts of copyright infringement;
- c. for actual or statutory damages, at Ms. Brackett's election, for the defendants' removal or alteration of copyright management information;
- d. for tort damages for the defendants' interference with Ms. Brackett's contracts and prospective economic relations;
- e. for punitive damages;

1 f. for Ms. Brackett's costs and attorneys' fees; and

2 g. for such other and further relief as the Court deems just and proper.

3  
4 RESPECTFULLY SUBMITTED,

5  
6 DATED: April 22, 2008

THE BERNSTEIN LAW GROUP, P.C.

7  
8 By: \_\_\_\_\_/s/\_\_\_\_\_  
9 Marc N. Bernstein

10 Attorneys for Plaintiff  
11 BERENICE BRACKETT  
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1 DEMAND FOR JURY TRIAL

2 Berenice Brackett hereby demands a jury trial on all issues so triable. Fed. R.  
3 Civ. P. 38.

4  
5 THE BERNSTEIN LAW GROUP, P.C.

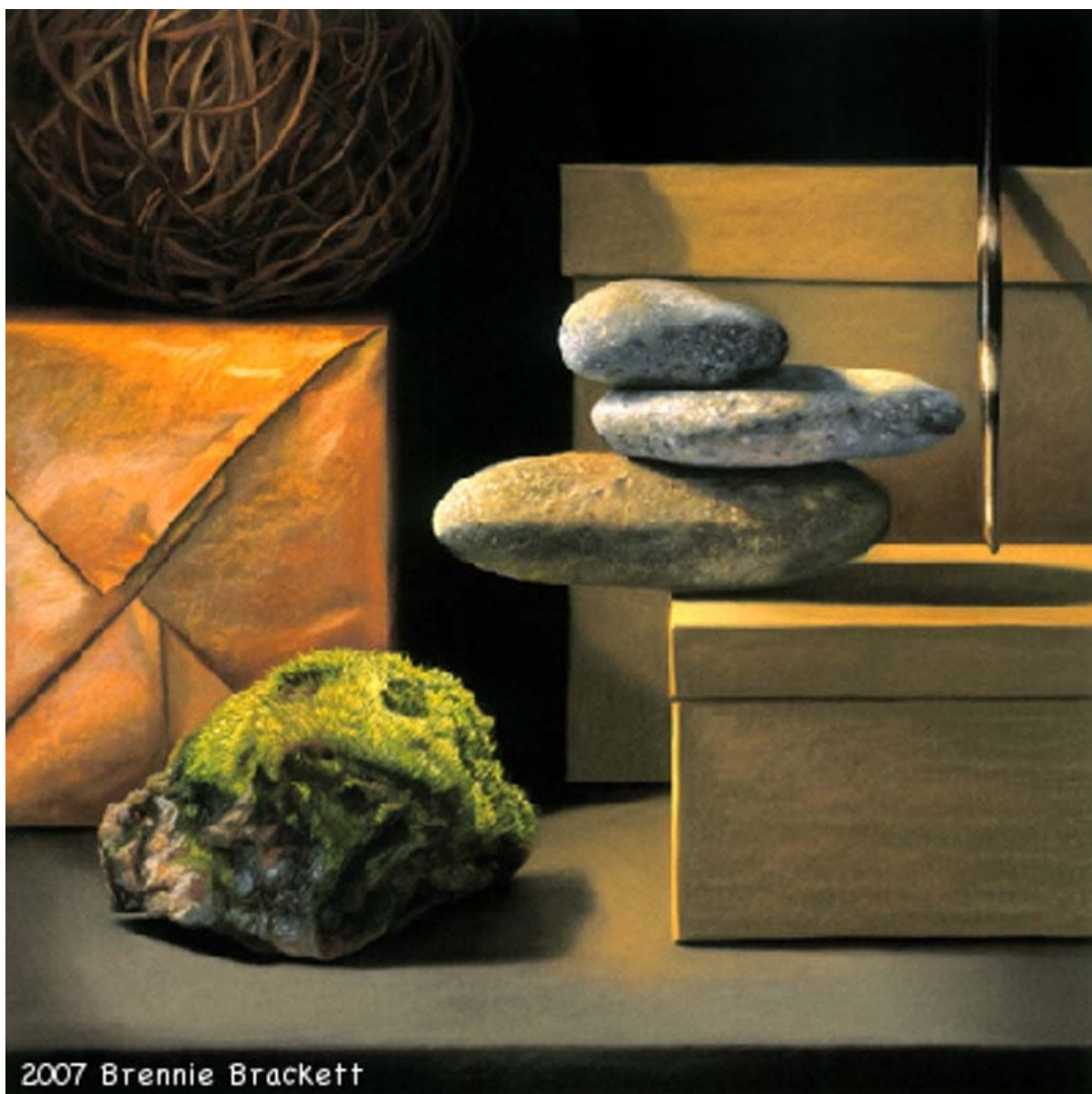
6 By: \_\_\_\_\_/s/\_\_\_\_\_  
7 Marc N. Bernstein

8 Attorneys for Plaintiff  
9 BERENICE BRACKETT

# EXHIBIT A



*Falling Into Place*, Copyright 2003 by Brennie Brackett



*Winters Velvet*, Copyright 2002 by Brennie Brackett





*Great Expectations*, Copyright 2002 by Brennie Brackett

# EXHIBIT B



Hilton Reproduction of *Falling Into Place*



Hilton Reproduction of *Winters Velvet*





Hilton Reproduction of *Great Expectations*